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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JOEL GALLEGOS,

Defendant and Appellant.

2d Crim. No. B210412
(Super. Ct. No. TA092367)
(Los Angeles County)

Joel Gallegos appeals from judgment after conviction by jury of three counts of second degree robbery (Pen. Code, § 211) and one count of assault with a deadly weapon (§ 245, subd. (a)(1))¹ The jury found true allegations that two of the robberies were committed for the benefit of a street gang within the meaning of section 186.22, subdivisions (b)(1)(B) and (b)(1)(C). The trial court sentenced appellant to 20 years and four months in state prison.

Appellant contends that there was no substantial evidence to support the findings that the robberies for which his sentence was enhanced were committed for the benefit of a street gang. We affirm.

¹ All statutory references are to the Penal Code unless stated otherwise.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and his codefendant, Rafael Flores, are members of the Dominguez Varrio Trece street gang (Dominguez and DVT). On the evening of June 20, 2007, between 9:00 p.m. and 10:00 p.m., appellant took two phones from two teenage boys on the street and then took money from a nearby bar. During the bar robbery, appellant broke a bottle over the head of an employee. Each crime was committed within Dominguez territory. During the crimes, Flores wore a Detroit Tigers cap, with an Old English D insignia, the gang's sign.

The two phone robberies were committed about 9:00 p.m., at Bataan Avenue. Appellant or Flores asked the boys for three dollars. The boys, V.R. and A.M., responded that they had no money. V.R. let Flores use his phone, and Flores returned it to V.R. when he was through. Appellant grabbed A.M.'s phone and put it in his pocket, refusing to return it when A.M. asked for it back.

Appellant then asked to see V.R.'s phone, took that phone and put it in his pocket. V.R. tried to get his phone back from appellant's pocket, but appellant gestured as if he were taking a gun out of his back pocket, and said, "You better shake it before I blast you." Flores also made a gesture as if he had a gun. The boys left because they did not want to get shot. As they left, they heard appellant or Flores say, "Dominguez" or "Dominguez Varrio Trece" and "Fuck Changos." The boys noticed Flores's cap with the Dominguez sign and knew that they were in DV13 territory.

The bar robbery was committed nearby at about 10:00 p.m. Appellant and Flores walked into the bar, jumped over the bar counter, took bottles of beer and demanded money. Three women were present.

Appellant demanded money from Martha Villegas. When she said, "Fucking dog, deal with the men," he broke a beer bottle over her head and took money from the cash register. Flores pushed the cashier, Karla Briones, toward the office and made a pointing gesture in his pocket as if he had a gun, saying, "Shut up, shut up." In the bar, Flores was wore his cap backward and Villegas did not see the insignia.

Villegas had seen appellant in the neighborhood many times and had seen Flores about five times. She testified that she did not know whether they were gang members. Briones did not testify at trial.

Officer Eric Arias testified that appellant and Flores were each admitted members of the Dominguez gang and had gang tattoos. In response to a hypothetical question based on the facts of this case, Arias offered the opinion that each crime was committed in order to benefit the gang by instilling fear in the residents of its territory and raising the personal status of appellant and Flores within the gang. He also testified that appellant and Flores could pawn the cell phones and use the cash from the bar to buy guns or drugs for the gang. Calling out, "Dominguez" after taking property warns a victim that there will be retaliation by the gang if the crime is reported. Gang members commit crimes together because they know they have each other's "back," and they can each attest to the other's involvement thereby raising their status. The parties stipulated to predicate crimes committed by members of the Dominguez gang.

Appellant's sentence for the robbery of V.R.'s phone and cash from the bar were enhanced as benefitting a criminal street gang pursuant to section 186.22, subdivision (b)(1).

DISCUSSION

Appellant contends that there was no sufficient evidence to support the jury's findings that the robberies of the phone from V.R. and the cash from the bar were committed for the benefit of a street gang within the meaning of section 186.22, subdivision (b)(1). He argues that the expert's opinion that cell phones can be pawned for drugs or guns to benefit the gang was speculative and unsupported by the evidence. He argues that the opinion that the bar was robbed to instill fear of the gang was undermined by the lack of evidence that anyone in the bar realized that appellant and Flores were gang members. We reject these arguments. Substantial evidence in the record supports a reasonable inference that both crimes were committed in association with a gang and with the intent to promote or assist gang activity.

In 1988, the Legislature enacted the California Street Terrorism Enforcement and Prevention Act (STEP Act), section 186.20 et seq., which prescribes increased penalties for crimes committed for the benefit of criminal street gangs. It was enacted in response to "California['s] . . . state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods." (§ 186.21.)

Before a sentence may be enhanced (§ 186.22, subds.(b)(1)(B) & (C)), two elements must be proven. The crime must be committed: (1) "for the benefit of, at the direction of, or in association with any criminal street gang," and (2) "with the specific intent to promote, further, or assist in any criminal conduct by gang members" (*Id.* subd. (b)(1).)

When the sufficiency of the evidence to support a sentence enhancement is challenged, we view the whole record in the light most favorable to the judgment and determine whether there is substantial evidence from which a reasonable trier of fact could have found the necessary elements to be true beyond a reasonable doubt. (*People v. Leon* (2008) 161 Cal.App.4th 149, 157, 161.) Substantial evidence is evidence which is reasonable, credible, and of solid value. (*People v. Lewis* (2009) 46 Cal.4th 1255, 1289.)

The jury's finding on the first element (benefit, direction, or association) is supported by substantial evidence because appellant committed each crime in association with another admitted gang member. A jury may "reasonably infer the requisite association from the very fact that defendant committed the charged crimes in association with fellow gang members." (*People v. Morales* (2003) 112 Cal.App.4th 1176, 1198.)

The jury's finding on the second element (specific intent to promote, further or assist any criminal conduct by gang members) is also supported by substantial evidence in the record. There is substantial evidence that appellant committed both crimes with the intent to further and promote Dominguez criminal activity by instilling fear in neighborhood residents. Both crimes were committed in Dominguez territory.

Flores was wearing a cap with gang insignia during both crimes. In addition, there is evidence that both crimes were coordinated efforts in which appellant and Flores assisted each other. When there is sufficient evidence that a defendant intended to aid and abet his fellow gang member in a crime, it can be fairly inferred that he intended to assist criminal conduct by fellow gang members. (*People v. Morales*, *supra*, 112 Cal.App.4th at p. 1198.) We decline to follow the Ninth Circuit case authorities cited by appellant (*Briceno v. Scribner* (9th Cir. 2009) 555 F.3d 1069; *Garcia v. Carey* (9th Cir. 2005) 395 F.3d 1099) that would require intent to assist in "other crimes," for the reasons stated in our recent decision in *People v. Vazquez* (2009) 178 Cal.App.4th 347, 353-355.

The possibility that the cell phones would be pawned was not the sole basis for the expert's opinion, or the jury's finding, that the cell phone robbery was committed to promote, further or assist the gang. Appellant or Flores announced "Dominguez" and said "Fuck Changos" on the street just after they robbed V.R. and just before they robbed the nearby bar. The prosecution's expert testified that gang members commonly commit crimes within their community with the goal of instilling fear within the residents in that community so that future crimes will not be resisted or reported. The expert's testimony was based on his extensive experience with criminal street gangs, which includes over 100 investigations where the suspect was alleged to be a member of Dominguez. The expert's additional testimony that cell phones can be pawned to benefit a gang was not the sole basis of his opinion and was not essential to a finding that the crimes were committed to further and promote Dominguez.

With regard to the bar robbery, Villegas's actual ignorance of appellant's gang membership is irrelevant to his specific intent to promote the gang by committing the crime. Substantial evidence in the record supports an inference that, whether or not he got his point across, appellant intended to increase the notoriety of the Dominguez gang and his own notoriety within it by instilling fear in the residents of the neighborhood who resisted. He entered the bar aggressively with another Dominguez member who was wearing gang insignia, just after they had committed and claimed for Dominguez two other robberies in the neighborhood.

In both crimes for which his sentence was enhanced, appellant acted with another gang member to threaten and terrorize peaceful citizens of his neighborhood, just the sort of crime that is targeted by the STEP Act. In both crimes, there was evidence that he threatened violence or used violence to frighten neighborhood residents who objected when he and Flores took their property. Appellant threatened to "blast" V.R. when he attempted to take his phone back and he knocked Villegas unconscious when she verbally resisted the bar robbery. Villegas had seen appellant many times in the neighborhood, which was thoroughly marked with Dominguez graffiti. If Villegas had never before realized that appellant was a member of Dominguez, she knows now. Appellant's notoriety and that of Dominguez has increased as a result of his crimes, an outcome that a jury could reasonably infer he intended.

DISPOSITION

The judgment is affirmed.

COFFEE, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Gary E. Daigh, Judge

Superior Court County of Los Angeles

Mark Yanis, under appointment by the court of appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Linda C. Johnson, Supervising Deputy Attorney General, Carl N. Henry, Deputy Attorney General, for Plaintiff and Respondent.